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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,737	02/05/2002	Wayne B. Sargent	31183.6	8665

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EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,737

Applicant(s)

SARGENT, WAYNE B.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 17-26 and 38-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 27-36 is/are rejected.
- 7) ☒ Claim(s) 15 and 37 is/are objected to.
- 8) ☒ Claim(s) 1-48 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant's election without traverse of the group I invention (a combination of first and second layers of ballistic material and connectors and associated method in Paper No. 8 is acknowledged.

Claims 17-26 and 38-48 are withdrawn from consideration as being directed to non-elected inventions. Claims 1-16 and 27-37 read on the elected invention and an action on these claims follows.

2. Claims 2-5, 7, 29-30, and 34 contains the trademark/trade names Kevlar, Spectra Shield, Spectra Shield LCR, and S745 Kevlar. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade names are used to identify/describe layers of ballistic resistant material and, accordingly, the identification/description is indefinite.

3. Claims 6-7, 28, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, how are the terms "an initial layer"; "five layers"; "a seventh layer"; an additional layer"; and "a thirteenth layer" intended to relate to the previously claimed layers "at least one first layer" and "at least one second layer". Are the layers of claim 6 intended to be

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additional layers or further descriptive of the previously claimed first and second layers (see claim 1)? Please clarify. Claims 7, 28, and 34 are indefinite for like reasons.

4. The term "high" in claims 9 and 31 is a relative term which renders the claim indefinite.

The term "high" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term high is not sufficiently defined to determine what molecular weights might or might not be inclusive in such terminology. The term high is not sufficiently defined to determine what strengths might or might not be inclusive in such terminology.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 8-9, 11-12, 14, 16, 27, 30, 32, and 35-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Price et al. (811).

Price et al. (811) disclose a ballistic resistant panel comprising:

- | | |
|---|------------------------|
| a) at least one first layer of a woven ballistic material; | 44, 48 |
| b) at least one second layer of a non-woven ballistic material; | 46, 46a, 46b |
| c) a first series of connectors; | 72 or 74 |
| d) a second series of connectors; | 72 or 74 |
| e) quilting of Spectra material; and | col. 5, lines
30-35 |

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f) a cover.

see figs. 3A,

3B

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price et al. in view of Miller.

Price et al. apply as recited above. However, undisclosed is quilting or stitching of cotton. Miller teaches a quilting or stitching of cotton (see col. 3, lines 58-61). Applicant is substituting one stitching material for another as explicitly encouraged by the secondary reference (see Miller, col. 3, lines 60-61). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Miller to the Price et al. ballistic panel and have a ballistic panel with a different material stitching.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Price et al. in view of Armellino Jr. et al..

Price et al. apply as recited above. However, undisclosed is quilting or stitching of Kevlar. Armellino Jr. et al. teach a quilting or stitching of Kevlar (see col. 2, lines 39-62). Applicant is substituting one stitching material for another as explicitly encouraged by the secondary reference (see Armellino Jr. et al., col. 2, lines 52-56). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Armellino

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Jr. et al. to the Price et al. ballistic panel and have a ballistic panel with a different material stitching.

10. Claims 27 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Borgese et al..

Borgese et al. disclose a ballistic resistant panel comprising:

- a) at least one first layer of a woven ballistic material; 14A or 14B
- b) at least one second layer of a non-woven ballistic material; 16A
- c) a series of connectors; and 20
- d) a cover. 12

11. Claims 1, 3-5, 9, 11-14, 27, 30, 32-33, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Li et al..

Li et al. disclose a ballistic resistant panel comprising:

- a) at least one first layer of a woven ballistic material; 12a-12j; col.
9, lines 1-2
- b) at least one second layer of a non-woven ballistic material; 12a-12j; col.
9, lines 3-4
- c) a first series of connectors; 14
- d) a second series of connectors; 16
- e) quilting of Spectra material; and col. 13, line 1
- f) layered formations of 90x90 and 45x45. col. 10, line
42

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12. Claims 15 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

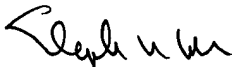
13. Claims 6-7, 28, and 34 are too indefinite in their current form to make a determination regarding patentability.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lawler and Dawson disclose other state of the art ballistic panels.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
May 19, 2003